IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23/08/2002

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Writ Petition No. 1454 of 1996 and Writ Petition No. 1784 of 1996
and Writ Petition No. 1842 of 1996
and
W.M.P.No. 2262 of 1996

Dr. E. Johnson ..Petitioner in W.P.1454 of 96

Dr. Mathew K. Sabastian ..Petitioner in W.P.1784 of 96

Dr. C.P. Geevan ..Petitioner in W.P.1842 of 96

-Vs-

1. Salim Ali Centre for
Ornithology and Natural History
represented by its Member Secretary,
Kalampalayam (P.O),
Coimbatore - 641 010.

2. Dr. V.S. Vijayan,
Director,
Salim Ali Centre for Ornithology
and Natural History, Kalampalayam
(PO), Coimbatore - 641 010. ... Respondents in all WPs.

Petitions under Article 226 of the Constitution of India, for issuance of
Writs of Certiorarified Mandamus as stated therein.

For petitioner in all W.Ps. : Mr. K. Chandru,
Senior counsel for Mr. R. Yashod Vardhan.

For respondents in all W.Ps.: Mr. R. Muthukumaraswamy,
Additional Advocate General for
Mr. P.D. Adikesavalu.

:COMMON ORDER

Since common issue is raised in these Writ Petitions, they are being disposed

of by the following common order. Aggrieved by the proceedings of Salim Ali Centre for Ornithology and Natural History - first respondent herein dated 30-01-1996, extending his period of Probation for six months with effect from 24-01-96, Dr. E. Johnson-petitioner has filed W.P.No. 1454 of 96 to quash the said order and consequently forbear the respondents from treating him as a probationer.

2. Aggrieved by the proceedings of the very same Institution dated 30-01-96, terminating their Probation and discharging them from the services of Salim Ali Centre for Ornithology and Natural History-first respondent, Dr. Mathew K. Sabastian and Dr. C.P. Geevan, petitioners have filed W.P.Nos. 1784/96 and 1842/96 respectively to quash those proceedings and consequently direct the respondents to reinstate them in service with backwages, continuity of service and all other attendant benefits.

3. The common facts applicable to all the three writ petitions are briefly stated hereunder:
Salim Ali Centre for Ornithology and Natural History (hereinafter referred to as "SACON")-first respondent Society herein is a body registered under the Society Registration Act and it is an organisation set by the Central Government, Ministry of Environment and Forest and it is completely controlled by the Central Government. In the Governing Council of the said institution there are nominees of the Central Government including the Secretary of the Ministry of Environment and Forest, Education Department of Maharashtra and various other Government sponsored bodies. The major activity of the Society is to develop the institution in the fields of Ornithology and Natural History, conducting research in related fields and conducting courses to students leading to the Post Graduate degree (M.Sc.,) and research degrees such as M.Phil., and Ph.D. It is a State within the meaning of Article 12 of the Constitution of India. For carrying out its activities, the first respondent has appointed number of persons drawn from various fields. Till this date, the first respondent had not framed rules relating to the service conditions of its employees and in its meeting held on 28-5-92, it had adopted the Government of India Rules and Regulations in the matter of service conditions of its employees. As per the by-laws of the society, the Governing Council is solely in charge of framing rules relating to creation of post, tenure, emoluments, allowances, Rules of Discipline and other conditions of officers and staff of the society.

4. Before coming to the first respondent Society, the petitioner in W.P.No. 1454/96 was working as a Librarian in the Central Marine Fisheries Research Institute at Ernakulam with effect from 3 -11-69. He had served in the institution till 5-3-1992 during which time he had several promotions and his final posting was that of a Technical Officer. After coming to know about a vacancy for the post of Librarian in the first respondent institute, he made an application dated 22-11-91 offering his service to the said post. He was called for an interview on 4-2-92 by the first respondent and on being successful in the interview, he was given an offer an appointment dated 19-2-92 for the post of Librarian in the first respondent institution. He accepted the offer and accordingly resigned his post with the central Marine

Fisheries Research Institute, where he had worked for 23 years. He joined the first respondent on 9-3-94. His probation period was fixed for 2 years from the date of joining the post and the period of probation may be extended at the discretion of the competent authority.

5. The petitioner in W.P.No.1784/96, before coming to work in the first respondent centre, was working as a Senior Research Assistant in the Central Silk Board from December, 1987 till 16-11-9 3 in a permanent post. He had worked in its various stations at West Bengal, Kerala and Mysore. After coming to know about a vacancy for the post of Extension Officer in the first respondent Institute, he made an application dated 23-8-93. He was called for an interview on 13-10-93 and on being successful, he was given an offer of appointment dated 19-10-93. After resigning his post, he joined duty in the first respondent centre on 17-11-93. He was on probation for a period of two years from the date of his joining the post and the period of probation may be extended at the discretion of the competent authority.

6. The petitioner in W.P.No.1842 of 96, before coming to work in the first respondent, he was working as Scientist in the National Information Centre Headquarters attached to the Planning Commission, Government of India and he had put in more than 5 years of service. After coming to know about a vacancy for the psot of System Analyst in the first respondent Institute, he made an application dated 29-11-91. He was called for an interview on 3-2-92. On being successful, he was given an offer of appointment dated 19-2-92 for the post of System Analyst. After resigning his previous post, he joined the first respondent institution on 1-5-92. After his joining, by an order dated 27-3-93, his post was redesignated as senior Scientist. He was on probation for a period of two years from the date of his joining the post and the period of probation may be extended at the discretion of the competent authority.

7. In all these 3 writ petitions, it is stated that the second respondent-Dr. V.S. Vijayan, Director of SACON, in the absence of any serious supervision by the Governing Council, turned the institution as his personal fiefdom and packed the institute with officers for his choice regardless merit and devoid of any contribution to the subject for which the institution was founded. As a first step, he brought his own wife-Mrs. Lalitha Vijayan to the Institution and made her as a Senior Scientist. The persons working in the Institution never had any forum to ventilate their grievances and whenever there was a problem with the second respondent, they had no one to look towards for expressing their grievances. While so, one Dr. Davies Frank Singh, who was working as Senior Scientist, unable to bear the harassment given by the second respondent, ended his life in tragic circumstances on 22/23 May, 1995. When he made an offer to go to United Kingdom for attending a training programme in a leading Institution, the second respondent unable to control his petty jealosy suspended him on the morning of 22-5-95 that too on flimsy grounds. The tragic death of a senior scientist in the first respondent Institution gave a real shock to the staff and officers working in the Institution and the death was widely reported in the Newspapers. The wife of the deceased Dr. Davies Frank Singh made a complaint to the Police against the second respondent and a F.I.R. was registered based on her complaint. Pursuant to

the complaint, the police visited the Institute and recorded statements from number of Scientists. The statements were also recorded from all the 3 petitioners. All the staff and Scientists including the petitioners applied for Casual Leave on 23-5-95 and 24-5-95 to register their protest and they also signed a petition demanding for replacement of the second respondent. Based on their representation, the Ministry of Environment and Forest was requested to depute a suitable officer to make a visit to the Institute. The Governing Council sent M/s. S.K. Mukarjee and J.C. Daniel to visit Coimbatore to assess the situation. They came to know that the committee submitted a report dated 23-8-95 and the same was forwarded to the Governing Council. The Governing Council instead of disclosing the report and considering the grievance expressed by the petitioner and other Scientists and staff, gave full powers to the 2nd respondent to deal with them. Taking note of the fact that the petitioners actively participated by raising voice against the second respondent, though the petitioner in W.P.No. 1454/96 had completed his probation period of 2 years as early as 8-3-94, no formal order was given to him confirming his services. During his probation, he had never received any memo or show cause notice and his conduct and character were entirely to the satisfaction of his superiors. The second respondent formed an assessment committee comprising of 4 members of which 3 members belonged to the Governing Council including Mr. J.C. Daniel, who earlier expressed a threat to the petitioner-Dr.E. Johnson. He appeared before the committee on 11-12-95. He was not informed of the remarks of the committee. However, the first respondent gave an order dated 30-1-96 , stating that the Governing Council had decided to extend his probation for 6 months with effect from 24-1-96. Aggrieved by the same, Dr. E. Johnson has filed the first writ petition viz., W.P.No.1454 of 9 6. For the same reasons and in view of their active involvement in raising voice against the second respondent with regard to the death of Dr. Davies Frank Singh, Senior Scientist, the probation in respect of the petitioners in W.P.Nos. 1784 and 1842/96 was not extended and they were discharged from the services of SACON.

8. On behalf of the respondents, 2nd respondent has filed a counter affidavit in Writ Petition No. 1454 of 96 wherein it is stated that SACON is a society registered under the Societies Registration Act. It is an autonomous Non-Governmental Organization. It was promoted by the Bombay Natural History Society (in short "BNHS"), which is yet another autonomous Non-Governmental Organization and a registered Society. The SACON is governed by its own Memorandum of Association and Rules and Regulations framed by the SACON Society. The principal object of the Society is to "develop an institution of excellence in the fields of Ornithology and Natural History". SACON has a large number of research projects in various parts of India including the Andaman and Nicobar Islands. As per the Rules and Regulations of the SACON Society, the Governing Council is the executive organ of the Society and shall function under the direct supervision and control of the Society. The Society inter alia has the power to frame, amend or repeal the rules for the administration of the affairs of the Society. The Governing Council inter alia has the power to frame, to amend or repeal the bylaws governing creation of posts, terms and tenure of appointments, rules of discipline and other conditions relating to the employees. The employees appointed in the SACON were placed on probation for a period of two years. The appointment orders

indicated that the period of probation may be extended at the discretion of the competent authority. It was also cited that the failure to complete the period of probation to the satisfaction of the competent authority will render the employees to be discharged from the services of SACON. No orders had been passed declaring the probation of the employees including the writ petitioner. At the meeting of the Governing Council held on 24-1-96, the Governing Council considered the question of declaration of probation of 11 scientists working in SACON. After a discussion and based on an overall assessment of the work and conduct of each of the scientists, it was decided that eight of them should be confirmed. In respect of Dr. Geevan and Dr. Mathew K. Sebastian, it was decided that their probation should be terminated. In the case of Dr. E. Johnson, it was decided that his probation should be extended for six months from the date of the meeting, viz.,, 2 4-1-1996. The impugned orders are not mala fide and the same were taken by the Governing Council. The very same 2nd respondent has filed a common counter affidavit in W.P.Nos. 1784 and 1842 of 96 wherein it is stated that the first respondent is a Society registered under the Societies Registration Act and it is an autonomous nongovernmental organization not controlled by any Government, including the Government of India. The first respondent is a private body and not a State within the meaning of Article 12 or Article 226 of the Constitution of India and as such the writ petitions filed under Article 226 of the Constitution of India, which are directed against the first respondent's orders are not maintainable. The merits of the orders have not been traversed in the counter affidavit.

9. In the light of the above pleadings, I have heard Mr. K. Chandru, learned senior counsel for the petitioners in all the writ ppetitions and Mr. R. Muthukumaraswamy, learned Additional Advocate General for respondents.

10. Mr. K. Chandru, learned senior counsel for the petitioners, after taking me through the Rules and Regulations, by-laws of the first respondent Society, initial appointment order, the details regarding the death of Dr. Davies Frank Singh, Senior Scientist and the impugned orders, would contend that the impugned orders were made out of the mala fide motive of the Governing Council and at the instance of the second respondent. He further contended that inasmuch as the petitioner in W.P.No. 1454/96 had completed his probation as early as 8-3-94, the extension of his probation cannot be taken after two years. He further contended that the impugned orders in W.P.Nos. 17 84 and 1842/96 expressly caused stigma against the petitioners therein; hence it is punitive in character. The petitioners were not given any opportunity to put-forth their views before their discharge and the same is opposed to the principles of natural justice. On the other hand, Mr. R. Muthukumaraswamy, learned Additional Advocate General, by pointing out the Memorandum of Assessment, Rules and Regulations of the first respondent Society, would contend that SACON is a private body and not a State or an authority within the meaning of Article 12 of the Constitution of India, as such the Writ Petitions which are directed against the first respondent's orders are not maintainable and liable to be discharged. In any event, according to him, since the impugned orders were passed by the Governing Council, which is the competent authority, after considering all the relevant materials, there is no merit in the claim of the petitioners.

11. I have carefully considered the rival submissions.

12. First I shall consider the main question, namely, whether the first respondent-SACON is a State or an Authority within the meaning of Article 12 of the Constitution amenable to jurisdiction under Article 226 of the Constitution of India; and whether the writ petitions directed against the first respondent's orders are maintainable?

13. Mr. K. Chandru, learned senior counsel for the petitioners, has relied on decisions, namely,

(1) B.S. MINHAS v. INDIAN STATISTICAL INSTITUTE
(1984 (1) L.L.J. 67)

(2) P. K. RAMACHANDRA IYER v. UNION OF INDIA
(1984 (1) L.L.J. 314)

(3) MADRAS LABOUR UNION v. BINNY LTD.
(1995 (1) L.L.J. 687)

(4) V. SADASIVAM v. BINNY LTD.
(1998 (1) L.L.J. 349)

(5) CHEMPLAST SANMAR LTD. v. METTUR CHEMICALS PODHU THOZHILALAR SANGAM (1999 Vol.95 FJR 527)

(6) U.P. STATE COOPERATIVE LAND DEVELOPMENT BANK v. CHANDRA BHAN DUBEY ((1999) 1 SCC 741)

in support of his claim that the first respondent Society is a State within the meaning of Article 12 of the Constitution; accordingly the writ petitions are maintainable. I shall consider those decisions one by one.

14. In 1984 (1) L.L.J. 67 (cited supra) the question raised before the Supreme Court was whether Indian Statistical Institute which is a Society registered under the Societies Registration Act is an authority within the meaning of Article 12 of the Constitution? The Indian Statistical Institute is a Society registered under the Societies Registration Act. It is wholly financed and controlled by the Union of India. A writ petition was filed under Article 32 of the Constitution of India challenging the appointment of the Director of the Institute. The Supreme Court, after analysing the issue and while rejecting the contention that writ is not competent and maintainable against the Indian Statistical Institute, has held that " Having regard to the decision in Ajay Hasia Etc. v. Khalid Mujib Sehravardi and others (1981-1 L.L.J. 103) and in view of the facts and circumstances of the case there can be no doubt that Indian Statistical Institute is an authority within the meaning of Article 12 of the Constitution and therefore, writ petition is competent in maintenance and the objection raised cannot be accepted.

15. In 1984 (1) L.L.J. 314 (cited supra) the question posed before the

Supreme Court was whether Indian Council of Agricultural Research ('ICAR' for short) and its affiliate Indian Veterinary Research Institute ('IVRI' for short) are instrumentality of the State and amenable to writ jurisdiction. ICAR and IVRI were set up as Societies and registered under the Societies Registration Act. Here again, Their Lordships, after considering the object and constitution and after relying on Ajay Hasia's case, came to a conclusion that ICAR and IVRI are instrumentality or agency of the Central Government and therefore it is "others authority" within the meaning of Art.12 of the Constitution, and as a necessary corollary the writ jurisdiction can be invoked against them. In 1995 (1) L.L.J. 687 (cited supra), while considering a labour dispute between Madras Labour Union and Binny Ltd., a Division Bench of this Court, after analysing the earlier case laws, found that the following propositions emerged:

(1) A private body which is not a "State" within the meaning of Art.12 of the Constitution of India is not generally amenable to Art. 226 of the Constitution.

(2) A writ will issue against a private body to protect the fundamental rights declared under Part III of the Constitution of India.

(3) A writ will issue in extraordinary circumstances if the monstrosity of the situation warrants it.

(4) A mandamus will be issued against a private body, if there is no equally convenient remedy and if there is a public duty.

(5) The implementation of a settlement under S.12 (3) of the Industrial Disputes Act, is not a public duty and no writ will lie against a private body.

(6) If the features are patent and they establish gross violation of the mandates of law, the jurisdiction under Art.226 of the Constitution could be exercised to quash a settlement under S.18(1) or S.12(3) of the Industrial Disputes Act."

16. In 1998 (1) L.L.J. 349 (cited supra), a Division Bench of this Court in a dispute between 37 work men and their employer Binny Limited, has arrived at the following conclusion: (para 11)

"The decisions of the Supreme Court of India reported in (1986-1-LLJ-171), (1986-II-LLJ 509) and (1991-1-LLJ-607) declared the position of law beyond doubt that a Rule or Clause in the contract or Agreement of Service which entitles the Management to terminate the services of an employee by merely giving one calendar month's notice or one month's salary in lieu of such notice would be ultra vires Article 14 of the Constitution of India and that such provision would also be opposed to public policy and violative of Section 23 of the Indian Contract Act. The petitioners, even if relegated to the relief of Suit or the Industrial Dispute in the Labour Court, as it may deem fit, there could be no difficulty for those forums to strike down such a rule or declare such a clause to be void and unenforceable and it may not involve

or necessitate any serious exercise or effort or any detailed enquiry to strike down such a rule or declare void such a clause, even in an agreement of service. The determination of the validity of such a clause as noticed above does not involve any factual investigation or appreciation of evidence and adjudication of factual issues. Consequently, instead of driving the petitioners to the appropriate forum, having regard to the fact that the writ petition has been filed and has been pending, on being entertained on the file of this Court so long we consider it appropriate, in the interests of justice to declare clause 8 of the Agreement of Service extracted above to be void and unenforceable against the petitioners as being violative of Section 23 of the Indian Contract Act, applying the law declared by the Apex court in the cases noticed supra. Consequently, the orders of termination in these cases are also declared illegal and nonest, having no legs to stand in the absence of the provision contained in clause 8 above, which has been declared void."

17. In 1999 Vol.95 FJR 527 (cited supra), a Division Bench of this Court has held that if there is violation of statutory provisions constituting unfair labour practice writ petition under Article 226 of the Constitution against a private employer is maintainable.

18. In (1999) 1 S.C.C. 741 (cited supra), the Supreme Court has held that the appellant U.P.State Coop. Land Development Bank Ltd., though a cooperative society registered under the U.P. Cooperative Societies Act, 1965 is constituted under U.P.Co-operative Land Development Bank Act, 1964, in view of the fact that control of the State Government on the appellant is all pervasive and the employees had statutory protection and therefore the appellant being an authority or even instrumentality of the State, would be amenable to writ jurisdiction of the High Court under Article 226 of the Constitution.

19. Mr. R. Muthukmaraswamy, learned Additional Advocate General very much relied on a decision of the Supreme Court in Chander Mohan Khanna v. NCERT, reported in A.I.R. 1992 Supreme Court 76. The question put-forth for consideration in that case was whether National Council of Educational Research and Training (NCERT in short) is State as defined under Article 12 of the Constitution. The NCERT is a society registered under the Societies Registration Act. Like all societies, it has a Memorandum of Association. It has Rules for internal management. After referring to various clauses as discussed by the High Court, the Supreme Court has held that, (para 5)

"5. The object of the NCERT as seen from the above analysis is to assist and advice the Ministry of Education and Social Welfare in the implementation of the Governmental policies and major programmes in the field of education particularly school education. The NCERT undertakes several kinds of programmes and activities connected with the co-ordination of research extension services and training, dissemination of improved educational techniques, collaboration in the educational programmes. It also undertakes preparation and publication of books, materials, periodicals and other literature. These activities are not wholly related to governmental functions. The affairs of the NCERT are conducted by the Executive Committee comprising of Government servants and educationists. The Executive Committee

would enter into arrangements with Government, public or private organisations or individuals in furtherance of the objectives for implementation of programmes. The funds of the NCERT consist of: (i) grants made by the Government, (ii) contribution from other sources, and (iii) income from its own assets. It is free to apply its income and property towards the promotion of its objectives and implementation of the programmes. The Government control is confined only to the proper utilisation of the grant. The NCERT is thus largely an autonomous body."

After referring to the decisions in Ajai Hasia (AIR 1981 SC 487) and Ramachandra Iyer (1984 (1) LLJ 314), the Supreme Court arrived at a conclusion that NCERT does not satisfy the requirements of "State" under Article 12 of the Constitution.

20. Learned Additional Advocate General has also relied on a latest decision of the Supreme Court in Pradeep Kumar Biswas v. Indian Institute of Chemical Biology ((2002) 5 Supreme Court Cases 111) : (2002 (2) CTC 474). In 1972 a Junior Stenographer with the Council of Scientific and Industrial Research (CSIR) filed a writ petition under Article 32 of the Constitution claiming parity of remuneration with the Stenographers who were newly recruited to CSIR. His claim was based on Article 14 of the Constitution. A Bench of five Judges of the Hon'ble Supreme Court denied him the benefit of that article because they held in Sabhajit Tewary v. Union of India (1975) 1 SCC 485): (AIR 1975 SC 1329) that the writ application was not maintainable against CSIR as it was not an "authority" within the meaning of Article 12 of the Constitution. The correctness of the decision was before the 7 Judges Bench of the Hon'ble Supreme Court. After saying so, Their Lordships after referring to the formation of CSIR and its objects and functions, arrived at the following conclusion (majority view): (para 45 and 46)

"45. These objects which have been incorporated in the memorandum of association of CSIR manifestly demonstrate that CSIR was set up in the national interest to further the economic welfare of the society by fostering planned industrial development in the country. That such a function is fundamental to the governance of the country has already been held by a Constitution Bench of this Court as far back as in 1967 in Rajasthan SEB v. Mohan Lal (AIR 1967 SC 1857) where it was said:
"The State, as defined in Article 12, is thus comprehended to include bodies created for the purpose of promoting the educational and economic interests of the people."

46. We are in respectful agreement with this statement of the law. The observations to the contrary in Chander Mohan Khanna v. NCERT (1991) 4 SCC 578) relied on by the learned Attorney-General in this context, do not represent the correct legal position. "

They also referred to the Management and control, financial aid of the CSIR (para 60)

"60. In the assessment of the facts, the Court had assumed certain principles, and sought precedential support from decisions which were

irrelevant and had "followed a groove chased amidst a context which has long

since crumbled". Had the facts been closely scrutinised in the proper perspective, it could have led and can only lead to the conclusion that CSIR is a State within the meaning of Article 12."

Ultimately, by majority view, the Supreme Court has held that decision in Sabhajit Tewary's case was not correctly decided and over-ruled the same and that CSIR is a State within the meaning of Article 12 of the Constitution.

21. Since both the counsel very much relied on the tests laid down in the ultimate decision in Pradeep Kumar Biswas's case (20 02) 5 Supreme Court Cases 111), now I shall consider the object, the management, and control of the first respondent Society (SACON). There is no dispute that the first respondent is a Society registered under the Societies Registration Act, which was established in 1990. It is an autonomous Non-Governmental organisation. It is also seen that the body was promoted by the Bombay Natural History Society which is another autonomous Non-Governmental organization and a registered society. The SACON-1st respondent is governed by its own Memorandum of Association and Rules and Regulations framed by the SACON Society. The membership of the Society consists of eminent Ornithologists, Environmentalist, administrators and social and physical scientists and such other persons who may assist in furthering the objects of the Society. In terms of the Rules and Regulations of the Society, the Governing Council is the executive organ of the Society and it functions under the direct supervision and control of the Society. The Governing Council of the Society consists of the Chairman (nominated by BNHS); 3 nominees of BNHS; the Chief Executive of BNHS; the Chairman, Centre for Ecological Sciences, Indian Institute of Science, Bangalore; the Vice-Chancellor, Bharathiar University, Coimbatore; the Director, Wildlife Institute of India, Dehradun; the Secretary, Department of Environment and Forests, Government of Tamil Nadu; the secretary, Ministry of Environment and Forests, Government of India; the Joint Secretary and Financial Adviser, Ministry of Environment and Forests, Government of India; three members co-opted by the Governing Council and the Director, Salim Ali Centre for Ornithology and Natural History. It is seen from the constitution of the Society that there are three persons from the Government, two from the Central Government and one from the State Government. It is pointed out that they do not have any controlling power except being part of the Society and the Governing Council. There is no dispute that the decisions of the Governing Council or the Society are based on majority. The objectives and activities of the Society, according to the Memorandum of Association, comprise research, training, education and extension in all aspects of ornithology and natural history and publication of scientific works and monographs in ornithology and natural history. By pointing out these objectives, learned Additional Advocate General has argued that these are wholly not governmental functions. It is further seen that the Society may acquire and hold property and deal with any property belonging to or vested with the Society in such manner as the Society may deem fit for advancing its objectives. It is stated that the Governing Council is free to apply its incomes towards the promotion of its objectives and implementation of

programmes. Learned Additional Advocate General has also stated that though at the initial stage the Society secured financial assistance from the Government of India, there is no permanent commitment on this. It is further stated that the Government of India have a say in the financial management of the Society only by virtue of the grants so received. The Government of India have no control over the affairs of the Society.

22. Mr. K. Chandru, learned senior counsel for the petitioner has brought to my notice the Minutes of 25th Meeting of the Governing Council held on 19-5-1995 at the SACON. It is seen that Governing Council is the appropriate body and respondent Society is being run by the same. In the Governing Council of the Society, there are nominees of the Central Government including the Secretary of the Ministry of Environment and Forest; Secretary, Education Department of Maharashtra and various other Government sponsored bodies. As already referred to by me, the major activity of the Society is to develop the Institution in the fields of Ornithology and Natural History, conducting research in related fields and conducting courses to students leading to the

Post-Graduate Degree (M.Sc.,) and research Degrees such as M.Phil and Ph.D. The objectives of the Society as found in the Memorandum of Association of the Salim Ali Centre for Ornithology and Natural History are as follows:

"The objects of the Society shall be:-
(i) To develop an institution of excellence in the fields of Ornithology and Natural History;

(ii) To develop and conduct research in all aspects of Ornithology;

(iii) To develop and conduct research in all aspects of the Natural History of other life forms;

(iv) To develop and conduct:

(a) Courses in Ornithology and Natural History for students at M.Sc., M.Phil, and Oh.D levels;

(b) short-term orientation courses in specialised aspects of Ornithology and Natural History;

(v) To initiate applied research of direct relevance to Ornithology and Natural History;

(vi) To create a Data Bank on Indian Ornithology and Natural History;

(vii) To confer honorary awards and other distinctions to persons who have rendered outstanding service in the fields of Ornithology and Natural History;

(viii) To organise lectures, seminars, workshops and other programmes in the fields of Ornithology and Natural History;

(ix) To promote the science of Ornithology and Natural History;

(x) To diffuse useful knowledge relating to Ornithology and Natural History for the benefit of the entire community;

(xi) To carry on activities for the extension of knowledge in the field of Ornithology and Natural History;

(xii) To publish scientific works and monographs in Ornithology and Natural History based on the activities of the Society; and

(xiii) Generally to do all such other lawful acts and things necessary, incidental, conducive or ancillary to attain the above mentioned objects.

PROVIDED THAT in carrying out the above mentioned objects no activity shall be undertaken with the dominant motive of making any profits and the dominant motive in all the activities of the Society shall always be the promotion of the above mentioned objects."

As stated in Pradeep Kumar Biswas's case regarding the objects and functions of CSIR, the objects of the first respondent Society clearly demonstrate that SACON was set up in the national interest and for development, particularly in the fields of Ornithology and Natural History. Such functions are fundamental to the governance of the country as held by a Constitution Bench of the Supreme Court in Rajasthan SEB v. Mohan (AIR 1967 SC 1857 wherein Their Lordships have held that " The State, as defined in Article 12, is thus comprehended to include bodies created for the purpose of promoting the educational and economic interests of the people."

23. Coming to the management and control of SACON, though it is stated that the majority view will prevail, it cannot be denied the dominant role played by the Government of India in the Governing Council of the SACON. As stated earlier, though the Chairman of the Governing Council is nominated by BNHS; the Secretary, Ministry of Environment and Forests, Government of India; the Joint Secretary and Financial Advisor, Ministry of Environment and Forests, Government of India; Director, Centre for Ecological Sciences, Indian Institute of Science, Bangalore; Vice-Chancellor, University of Bombay, Director of Wildlife Institute of India, Dehradun; and the Secretary, Department of Education, Government of Maharashtra are also members of the Governing Council. The Governing Council shall have a strength not exceeding 15 members including the nominees/ex-officio members. As per the Rules and Regulations of SACON, the Governing Council shall set up a finance Committee which shall include the Financial Advisor of the Ministry of Environment and Forests, Government of India, to assist the Governing Council in financial matters. As per Rule 12.1 of the Memorandum of the SACON, the budget of the Society shall be scrutinised by the Finance Committee and approved by the Governing Council before the same is sent to the Government of India. Rule 13.1 speaks about powers of the Central Government wherein it is stated that in the event of disagreement between representatives of the Ministry of Finance and the Governing Council on any financial matter beyond the delegated powers of the Ministry/Departme nt of the Government of India, the matter shall be referred to the Minister of the Administrative Ministry concerned and the Finance Minister for a decision. Rule 17 speaks about funds of the

Society as under:

"17. FUNDS OF THE SOCIETY

17.1 The funds of the Society shall consist of the following:

(i) Recurring and non-recurring grants made by the Central Government;

(ii) Recurring and non-recurring grants made by any State Government and Union Territory of India;

(iii) Contributions and benefactions from other sources; and

(iv) Incomes from investments and other sources."

As per Rule 18.2 the Director shall maintain proper accounts and other relevant records and prepare the annual statements of accounts including the balance sheet in such forms as prescribed by the Central Government, in consultation with the Comtroller and Auditor General of India. As per Rule 18.4 the accounts of the Society as certified by the Auditors together with the Auditors' Report thereon shall be placed before the Annual General Meeting of the Society as well as forwarded to the Central Government. Rule 18.5 says that the accounts of the Society shall be open to audit by the Comptroller and Auditor General of India and expenditure for such audit by the Comptroller and Auditor General of India shall be payable by the Society. The area of activity is detailed in Rule 20.1. According to which, the activities of the Society may be taken up anywhere in India and, with the prior approval of the Central Government, anywhere outside India. Rule 21 .1 gives powers to the Society to alter, extend, abridge or amend its objects subject to the prior approval of BNHS and the Ministry of Environment and Forests, Government of India and within the meaning of the Societies Registration Act, 1860. The above provisions make it clear that Government Officials have been participating in SACON, that the Finance Committee has to submit its report to the Government of India before approving the same by the Governing Council, that the funds of the Society are to be audited by the Comtroller and Auditor General of India and with the prior approval of the Central Government, and that the Society, besides its operation within India can also extend its area of operation outside India. It is clear that with the prior approval of Minister of Environment and Forests, Government of India, it is open to the Society to alter, amend and make changes in the objects of the Society. All these provisions would clearly show that the Central Government have dominant role in the affairs and interest of the SACON. Thus, the dominant role played by the Government of India in the Governing Body of SACON is evident.

24. Coming to the financial aid, Mr. K. Chandru, learned senior counsel for the petitioners has placed a report submitted to the Parliamentary Standing Committee on Science and Technology and Forests and Environment dated 5-6-2000. Page 11 of the book-let contains relevant details regarding budget allocation and expenditure of SACON as detailed below:

'BUDGET ALLOCATION AND EXPENDITURE OF SACON FROM INCEPTION TILL DATE

The Ministry of Environment and Forests, Government of India has released Rs.743.43 lakhs to SACON since inception till date. The Details of the same are given below:

---------- Year Amount released
(Rs.in lakhs)

1991-92 40.00
1992-93 104.00
1993-94 31.57
1994-95 45.00
1995-96 59.86
1996-97 72.00
1997-98 178.00
1998-99 96.00
1999-2000 117.00

Total 743.43

Out of Rs.743.43 released, SACON has acquired assets worth Rs.302.39 lakhs as on 31-3-2000."

The above details clearly show the year-wise investment by the Government of India. Though certain contributions are made by State Governments and to small extent by individuals, institutions and other agencies, it is clear that the non-governmental contributors are pittance compared to the massive input. I have already referred to the Rules regarding expenditure and placing of all the details to the Government of India as well as the fact that apart from an internal audit, the accounts of SACON are required to be audited by the Comtroller and Auditor General. All the above details clearly satisfy the tests laid down in Pradeep Kumar Biswas's case.

25. Learned senior counsel for the petitioner has also brought to my notice that on the basis of the request made by SACON, the Syndicate of Bharathiyar University, Coimbatore at its meeting held on 1-10-93 considered the report of the Inspection Commission for grant of recognition to the Salim Ali Centre for Ornithology and Natural History, Coimbatore for conducting Ph,.D Programmes from the academic year 1993-94 and granted recognition for conduct of Ph.D Programmes in Zoology, Botany and Environmental Sciences from the academic year 1993-94 subject to fulfilling the conditions stipulated by the Inspection Commission and also subject to the rules and regulations of Bharathiar University. This is evident from the letter of the Registrar, Bharathiar University, Coimbatore dated 05-11-1993 addressed to the Director, SACON.

26. Learned senior counsel has also brought to my notice a letter dated 5-8-97 issued by Mr. K.V.S.P. Rao, Principal Scientific Officer, Government of India, Ministry of Science and Technology, certifying that Salim Ali Centre

for Ornithology and Natural History, Coimbatore is registered with the department of Scientific and Industrial Research (DSIR) for purposes of availing customs duty exemption in terms of Government Notificaiton No. 51/96-Customs dated 23 July, 1996 and Central Excise duty exemption in terms of Government Notificaiton No. 10/97-Central Excise dated 1 March 1997. The said registration is valid upto 31-8-2001.

27. All the above details establish that the tests formulated in Ajay Hasia's case as well as Pradeep Kumar Biswas's case and, accordingly I hold that the first respondent SACON is a "State" within Article 12 of the Constitution of India. Though the learned Additional Advocate General has pointed out that all the facts showed that the control is merely regulatory, for the reasons mentioned above, I am of the view that the cumulative facts led to an irresistible conclusion that SACON is a "State" within the meaning of Article 12 of the Constitution and that the orders passed by them are amenable to writ jurisdiction of this Court under Article 226 of the Constitution of India.

28. Coming to the second contention regarding extension of probation period for six months in the first writ petition and terminating probation and discharging the two petitioners from the services of SACON in the other two writ petitions, the initial appointment order, particularly para 5 says that,

"You will be on probation for a period of two years from the date of your joining the post and the period of probation may be extended at the discretion of the competent authority. Failure to complete the period of probation to the satisfaction of the competent authority will render you liable to be discharged from the service of SACON."

Admittedly, no order has been passed either extending the probation period or terminating the probation within the prescribed time. In the first case, it is the case of the petitioner that he had completed his probation as early as 8-3-94, and according to him, the extension of his probation cannot be taken after two years. As rightly argued, it is not as if the petitioner's probation was extended periodically after the expiry of initial probation on 8-3-94 and that a further extension was granted by virtue of the impugned order. It is true that after expiry of the probation period, without a specific order, the person concerned cannot be treated as a permanent. However, the fact remains that no extension of probation was granted to the petitioner in the first writ petition after 8-3-94, and in the absence of any other acceptable reason, the Governing Council cannot extend the probation for 6 months after 1 year and 10 months. I have already referred to the categorical assertion made by all the 3 petitioners regarding the role of the second respondent in the administration, namely appointing his wife Mrs. Lalitha Vijayan as a Senior Scientist, suspension of Dr. Davies Frank Singh, who ended his life on 22/23-5-1995 due to unable to bear the attitude of the second respondent, strong objection by all the scientists and staff regarding the behaviour of the second respondent in the administration. I have also referred to the incident of applying Casual Leave on 23-5-95 and 24-5-95 by the staff and the Scientists of the SACON including the petitioners to

register their protest, demanding for replacement of the second respondent, statement made to the Inspector of Police pursuant to the complaint of the wife of Dr. Davies Frank Singh, publication of the said incident in the Newspapers etc. Though the second respondent alone has filed a brief counter affidavit in W.P.No.1454/96 disputing those averments, admittedly in the common counter affidavit filed by respondents 1 and 2 in W.P.Nos. 1784 and 1842/96, except highlighting the fact that SACON is not a State within the meaning of Article 12 of the Constitution, nothing has been traversed by giving details of their case. Though it is stated by respondents 1 and 2 that they would file a separate counter affidavit controverting all the factual details furnished by the learned senior counsel for the petitioner, the fact remains that except projecting his case that SACON is not a State within the meaning of Article 12 and not amenable to writ jurisdiction, nothing has been elicited till date. In such a circumstance, as rightly pointed out by the learned senior counsel, the specific averments made in W.P.Nos. 1784 and 1842/96 are deemed to be accepted by the respondents.

29. Learned Additional Advocate General next advanced his argument that it is the Governing Council which considered the overall performance of the petitioners during the period of probation, and that since their performance was not found to be satisfactory during the said period, the Governing Council rightly took a decision to extend the probation of the petitioner in the first writ petition by six months and terminate the services of the petitioners in the other two writ petitions. It is true that even under law services of a probationer may be terminated after making over all assessment and during the period of probation and no notice is required before terminating his services. It is also settled law that if the performance of the employee concerned during the period of probation is not found to be satisfactory on over all assessment, then it is open to the competent authority to terminate his services. In this regard, it is relevant to note a decision of the Apex Court in Chandra Prakash Shahi v. State of U.P., reported in AIR 2000 Supreme Court 1706 wherein Their Lordships have held that the question whether the order by which the services were terminated was innocuous or punitive in nature had to be decided on the facts of each case after considering the relevant facts in the light of the surrounding circumstances. In the cases on hand, I have already referred to the involvement of the petitioners in raising objections against the second respondent, particularly after the death of Dr. Davies Frank Singh in tragic circumstances on 22/23rd May, 1995. In the absence of any counter affidavit controverting those specific averment, the surrounding circumstances asserted in the affidavit of the petitioners cannot be ignored while testing the impugned orders. As discussed above, if we apply the surrounding circumstances, as specifically asserted in the affidavit, the same not being controverted by way of counter affidavit, it leads to an irresistible conclusion that the impugned order caused stigma against the petitioners in W.P.Nos. 1784 and 1842/96 and undoubtedly, it is punitive in character, more particularly when they were not given opportunity to put-forth their views. Accordingly, I accept the second contention advanced by the learned senior counsel for the petitioners.

30. In the light of what is stated above, I pass the following order:

It is stated that Dr. E. Johnson, petitioner in W.P.No. 14 54 of 96 is continuing in the first respondent Institution by virtue of the stay order of this Court dated 08-02-96. In the light of the above conclusion, he will continue in the first respondent Institution till the age of his superannuation. Since the petitioners in W.P. Nos. 1784 and 1842 of 1996 were discharged from the services of SACON even on 30-01-1996 and did not secure stay order from this Court, in view of the above conclusion, they are liable to be reinstated in service with service benefits only. Net result, the petitioners in W.P.Nos. 1784 and 1842 of 1996 are entitled to reinstatement with service benefits only, but without back wages. Accordingly, the impugned proceedings in all the writ petitions are quashed and Writ Petition No. 1454 of 96 is allowed; and W.P.Nos. 1784 and 1842 of 1996 are allowed to the extent mentioned above. No costs. Consequently, W.M.P.No. 2262 of 96 is closed.

Index:- Yes
Internet:- Yes
R.B.
To:-
1. Salim Ali Centre for
Ornithology and Natural History
represented by its Member Secretary,
Kalampalayam (P.O),
Coimbatore - 641 010.

2. Dr. V.S. Vijayan,
Director,
Salim Ali Centre for Ornithology
and Natural History, Kalampalayam
(PO), Coimbatore - 641 010.

P. SATHASIVAM, J.

Common Order in
W.P.Nos.1454, 1784
and 1842/1996
and W.M.P.No.2262/96.
Dt:-23-08-2002

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